

*See Vol.
3406*

UNITED STATES
COURT OF APPEALS
FOR THE NINTH CIRCUIT

CHARLES EDWARD BENNER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Upon Appeal from the Judgment of the United States
District Court for the District of Oregon

BRIEF FOR THE APPELLEE

SIDNEY I. LEZAK
United States Attorney
District of Oregon

FILED

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U.S. DISTRICT COURT

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COUNTER-STATEMENT OF THE CASE

Defendant's statement of facts is sufficient. The opinion of the trial court is reported in United States v. Benner, 289 F.Supp 860, D.C. Or., 1968). The text of the opinion is contained in Appendix A.

ARGUMENT

THE FIFTH AMENDMENT IS NOT APPLICABLE

The sole issue raised is whether or not defendant's Fifth Amendment right against self-incrimination should have barred his conviction under 26 U.S.C. § 5851 for possession of a firearm not manufactured in accordance with 26 U.S.C. § 5821. Haynes v. United States, 390 U. S. 85 (1968) is conceded to be the controlling case. Research by the Government has produced six cases decided subsequent to Haynes involving convictions analogous to defendant's. Five support the lower court decision in United States v. Benner, 289 F. Supp. 860 (D. Or., 1968).^{1/}

Defendant contends Form 1A, Declaration of Intent to Make a Firearm (Appendix B), cannot be used in any manner without incriminating the declarant (D. Br. 12) and that the only major effect of § 5821 is production of incriminating information (D. Br. 13).

This contention is not consistent with 26 C.F.R. § 179.78 which provides:

"...The declaration must be supported by a certificate of the local Chief of Police, Sheriff of the County, United States Attorney, United States Marshall or such other person whose certificate may in a particular case be acceptable to the Director, Alcohol and Tobacco Tax Division...that the firearm is intended by such person for lawful purposes." [Emphasis added].

^{1/}
Reed v. United States, 401 F.2d 756 (8th Cir., 1968); Varitimos v United States, ___ F.2d ___ 4Criminal Law Reporter 2246 (1st. Cir., 1968); United States v. Casson, 283 F. Supp. 86 (D. Del., 1968); United States v Taylor, 286 F. Supp. 683 (E. D. Wis., 1968); cf. De Pugh v. United States, 401 F.2d 346 (8th Cir., 1968). Contra, United States v. Stevens, 286 F. Supp. 532 (D. Minn., 1968).

The requirements of § 5821 "establish the legality, rather than illegality, of the possession of such a firearm." United States v. Taylor, 286 F. Supp. 683, 684 (E. D. Wis., 1968) citing United States v. Mares, 319 F.2d 71, 73 (10th Cir., 1963).

Therefore, the purpose of § 5821 is diametrically opposed to that of § 5841 which is "...directed principally at those persons who have obtained possession of a firearm without complying with the Act's other requirements and who therefore are immediately threatened by criminal prosecutions under § 5851 and 5861," Haynes v. United States, supra, p. 96. A maker would already have possession and there is no provision for a possessor to legitimize his possession by compliance with § 5821 after the firearm has been manufactured. United States v. Taylor, 286 F.Supp. 683, 684 (E. D. Wis., 1968).

The underlying offense in Haynes was the possession of a firearm which had not been registered as required by § 5841. In the case at bar, defendant was not convicted of a failure to comply with § 5821 prior to the firearm's manufacture. He was convicted for possession of an illegally made firearm.

If the gun was made prior to defendant's acquisition, the offense was complete upon defendant's receipt. Compliance with § 5821 by the maker would not amount to self-incrimination on the part of the defendant. United States v. Casson, 288 F.Supp. 86, 90 (D. Del., 1968).

Therefore, self-incrimination may not be used as a defense because defendant, as a possessor, was not required to register or otherwise incriminate himself. United States v. Taylor, 286 F.Supp. 683, 684, (E.D. Wis., 1968); cf. Reed v. United States, 401 F.2d 756, 763, (8th Cir., 1968). Also see United States v. Benner, 289 F. Supp. 860, 861 (D. Or., 1968).

Assuming defendant was the maker, he also would not be able to assert self-incrimination as a defense. Once the firearm has been manufactured, possession of it is an offense under § 5851. Section 5821 (c) provides that "...[the] tax shall be paid in advance of the making of the firearm." Section 5821 (c) also provides that the required declaration shall be made "...prior to such making..." [Emphasis added]. There is no provision under § 5821 for the possessor to legitimize his possession by subsequently complying with § 5821. United States v. Taylor, supra, p. 684.

The self-incrimination privilege should not extend to a maker charged with a violation of § 5851 since the charge relates to possession of an illegally made weapon, not its manufacture. The scienter required by the statute is merely a "knowing possession." Sipes v. United States, 321 F.2d 174, 179 (8th Cir., 1963) cert. denied 375 U.S. 913 (1963); Hazelwood v. United States, 208 F. Supp. 622 (N.D.Cal., 1962); United States v. Mares, 208 F.Supp. 550 (D. Colo., 1962), Aff'd, 319 F.2d 71 (10th Cir., 1963).

There must be a substantial and real hazard of incrimination before the Fifth Amendment may be invoked as a defense. Marchetti v. United States, 390 U.S. 39, 52-53 (1968). The risk of incrimination under § 5851 for one who complies with § 5821 is "speculative and unsubstantial. Under Marchetti this is not enough." United States v. Casson, 288 F.Supp. 86, 90 (Del., 1968).

Registration information acquired under § 5841 is made available to state authorities pursuant to 26 U.S.C. § 6107. However, information given in conformance with § 5821 is not made available under 26 U.S.C. § 6107. In Haynes v. United States, supra, p. 99-100, the Supreme Court noted that " . . . provisions of 26 U.S.C. § 6107 are applicable to the

special occupational taxes imposed by § 5801, although not, apparently,
to the making and transfer taxes imposed by §§ 5801 and 5802."

[Emphasis added.]

An individual filing a declaration under § 5821 must obtain certification from a local official that the gun will be used for lawful purposes. Undoubtedly, the prospective manufacturer would be informed by the local official if the firearm would be in violation of any applicable statutes.

Also, 26 C.F.R. § 179.79 requires a declarant to obtain the approval of the Director, Alcohol and Tax Division, prior to making the firearm. As a matter of policy, the Alcohol and Tax Division will not grant approval if the firearm manufacture will constitute a violation of Federal, State or local law.

The issue of whether the required filing of a declaration of intention to make infringes upon the constitutional privilege against self-incrimination was raised in United States v. Mares, 319 F. 2d 71 (C.A. 10, 1963). In that case a defendant was convicted of one count charging possession of a sawed-off shotgun which he had not registered pursuant to Section 5841 and of a second count charging possession of a firearm made in violation of Section 5821. On appeal, the Tenth Circuit set aside the conviction on count one because Mares had raised a proper claim of privilege under the Fifth Amendment. As to the remaining count, the court said at page 73:

"The declaration requirement contained in 26 U.S.C. 5821(e) does not violate the constitutional safeguard against self-incrimination in respect to prosecutions for possession of firearms illegally made...Section 5821 requires one who desires to make/firearm to file a declaration of intent with the Secretary of the Treasury and to pay the prescribed tax. In contrast with Section 5841, there is no self-incrimination inhering in the filing of the latter declaration or the payment of the tax. The declaration and payment required by Section 5821 would establish the legality, rather than illegality, of the possession of such a firearm."

The purpose of § 5821 in requiring "considerably more information than § 5841" (D.Br. 6) works to the advantage of an applicant since the information is used to insure the legality of the firearm. The possessor of an illegally manufactured firearm is not obliged to register as stated in Defendant's Brief at page 6. A proper claim of one's Fifth Amendment right against self-incrimination is a full defense to a charge of failure to register a firearm pursuant to § 5851. Haynes v. United States, 390 U.S. 85, 100 (1968).

The Supreme Court stated at page 90:

"...We are required only to resolve the narrow issue of whether enforcement of § 5851 against petitioner, despite his assertion of the privilege against self-incrimination, is constitutionally permissible."

Several recent decisions have refused to expand Haynes to cover other portions of the Act. Reed v. United States, 401 F.2d 756 (8th Cir., 1968); United States v. Taylor, 286 F.Supp. 683 (E.D.Wis., 1968); United States v. Benner, 289 F.Supp. 860, 861(D.Or., 1968).

The only decision to the contrary is United States v. Stevens, 286 F.Supp. 532, 535 (D.Minn., 1968) which held § 5821 to be

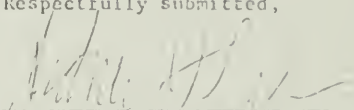
unconstitutional on the ground that it required incriminating information.

However, two subsequent Eighth Circuit decisions have held to the contrary (the District Court for the District of Minnesota falls within the jurisdiction of the Eighth Circuit). Peed v. United States, 401 F.2d 756 (8th Cir., 1968); De Pugh v. United States, 401 F.2d 346 (8th Cir., 1968).

CONCLUSION

It is submitted that this Court should find that a violation of 26 U.S.C. § 5851 by non-compliance with 26 U.S.C. § 5821 does not fall under the self-incrimination clause of the Fifth Amendment. The Court should affirm the judgment of the court below and find defendant guilty of the above violation as set forth by the United States Attorney's Information.

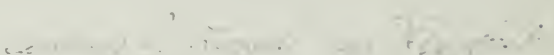
Respectfully submitted,



SIDNEY I. LEZAK
United States Attorney
District of Oregon

CERTIFICATE OF SERVICE BY MAIL

I HEREBY CERTIFY that I have made service of the foregoing Brief for the Appellee on the Appellant, Charles Edward Benner, by depositing in the United States Post Office at Portland, Oregon, on January 9, 1969, a certified true, exact and full copy thereof, enclosed in an envelope with postage thereon prepaid, addressed to William V. Bierck, Esq., Suite 108, Lloyd Plaza, 1425 N. E. Irving Street, Portland, Oregon, 97232, attorney of record for Appellant.



SIDNEY I. LEZAK
United States Attorney
District of Oregon
Of Attorneys for the Appellee

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

UNITED STATES OF AMERICA)

Plaintiff)

v.)

CHARLES EDWARD BENNER,)

Defendant.)

NO. CR 68 85

FINDINGS AND OPINION

KILKENNY, JUDGE:

Defendant is charged under 26 U.S.C. § 5851 with knowingly willfully unlawfully and feloniously possessing a sawed off firearm in violation of 26 U.S.C. § 5821. The facts are not in dispute. Defendant's only defense is that § 5851 as applied to § 5821, violates his Fifth Amendment rights against self-incrimination. He relies on the recent cases of Marchetti v. United States, 390 U.S. 39 (1968), Grosso v. United States, 390 U.S. 62 (1968) and Haynes v. United States, 390 U.S. 85 (1968). In my view, those cases are distinguishable.

Under the provisions of 26 U.S.C. § 5821, it is obligatory on any person who wishes to make a firearm, whether by manufacture or alteration, to declare his intention to the Secretary of the Treasury and provide his fingerprints and photograph prior to the making. Moreover, such person must pay a tax of \$200.00 on each firearm so made. Section 5851 declares it unlawful for any person to possess or receive a firearm made in violation of § 5821.

The decision in Haynes is restricted to a declaration that § 5851, making it unlawful for any person to possess a firearm not registered under § 5841, violated the Fifth Amendment. Clearly, in order to register the gun under § 5841, the person had to admit that he possessed it unlawfully. Here, defendant is not charged with failure to register his gun. He is charged with a violation of a separate provision of § 5851, making it unlawful to receive or possess an illegally made firearm. Decision on this point was expressly reserved in Haynes, 390 U. S. 91. The decisions in Marchetti and Grosso, in my opinion, have no application to the admitted facts in this case. There, the taxpayers were, in effect, required by the applicable statute to declare that they were engaged in illegal activities. Here, as previously mentioned, defendant is only charged with the act of possessing an unlawfully made gun. Nowhere, does the statute require him to make a declaration which would be incriminatory in nature.

I find that on or about February 3, 1968, in the District of Oregon, that defendant did knowingly, willfully, unlawfully and feloniously possess a firearm, to-wit: a Savage .22 Magnum Rim Fire rifle with 7-1/2 inch barrell, overall length 17-3/4 inches, butt sawed off to pistol grip, no serial number, which had been made in violation of Title 26, § 5821, United States Code; in violation of Title 26, § 5851, United States Code, and that defendant is guilty of the crime as charged in the information.

The foregoing shall serve as my findings and conclusions. The matter is referred to the Probation Department for a pre-sentence report and placed on my sentencing calendar for June 26, 1968, at 10:30 A.M., at

which time defendant and his attorney shall appear.

DATED this 5th day of June, 1968

John F. Kilkenny
District Judge

(Execute in DUPLICATE. Read the INSTRUCTIONS on page 3 carefully before proceeding.)

THE POLYMER LETTERS EDITION - COLUMBIA UNIVERSITY PRESS

signed hereby declares his intention to make a financial report by Monday 21 of the 1 DAY

NO ADDRESS OF DECLARANT (if, - or if the name of the declarant is not known)
city or town, State, Zip code)

A S O U S "INTERNAL REVENUE ACT" stamping has been done in your DISTRICT DIVISION OF INTERNAL REVENUE and must be carefully checked by the officer in this regard and completed by writing his initials and the date thereon in ink. When completed, this declaration in duplicate must be transmitted to the DIRECTOR, ALCOHOL AND TOBACCO TAX DIVISION, INTERNAL REVENUE SERVICE, WASHINGTON, D. C. 20224.

NO ADDRESS OF EXECUTIVE OFFICER IF APPLICANT IS OTHER THAN AN INDIVIDUAL

YOU CAN COME
OF A FELONY

☐ YES ☐ NO

7 FIREARM (Machine gun, submachine gun, shot-gun or rifle, muffler or silencer, etc.)

И О Р В А З П Е Л (с.с.с.с.)

7. MODEL

6. CALIBER OR GAUGE

9. SERIAL NUMBER

NAME OF IDENTIFICATION

11. NAME AND LOCATION OF ORIGINAL MANUFACTURER OF FIRE ARM (If priority; if furnish plans and specifications)

IS YOUR OBJECT IN SEEKING TO MAKE THE FIREARM?

Declare under the penalties of perjury that the foregoing is being made for a lawful purpose and that the answers given in response to questions 3 to 12 inclusive are, to the best of my knowledge and belief, true, correct, and complete.

URE OF DECLARANT

14. TITLE OR STATUS (Individual member of firm, if officer of corporation, give title)

as called for in Items 15 thru 20 on reverse of this form must be furnished, unless declarant is other than an individual.

DO NOT WRITE IN THIS SPACE

DECLARATION OF INTENT TO MAKE THE FIREARM DESIGNATED HEREIN HAS BEEN EXAMINED AND THE MAKING OF THE
 FM IS

APPROVED ☒ DISAPPROVED FOR THE FOLLOWING REASON:

17. SIGNATURE (Director, Alcohol and Tobacco Tax Division)

URGENT 0115 (Under no circumstances will this declaration be considered a confession or admission of guilt.)

The fingerprints must be clear for accurate classification and should be taken before the person has used any alcohol, drugs, or other substances.

The declaration must be supported by a certificate of the local health officer, the sheriff, the local fire marshal, or such other person whose certificate may in a particular case be required by the State Firearm Tax Division, that he is satisfied that the fingerprints and photograph were taken voluntarily, and that no information is available which would indicate that the declarant will use the firearm for other than lawful purposes.

No forms will be approved where the fingerprints are made by a **NOEL APPROPRIATION BY AFFILIATE**

1—Right thumb	2—Right forefinger	3—Right middle finger	4—Right ring finger	5—Right little finger
6—Left thumb	7—Left forefinger	8—Left middle finger	9—Left ring finger	10—Left little finger

Impression of the four fingers taken simultaneously - LEFT HAND	Left thumb	Right thumb	Plain Impression of the four fingers taken simultaneously - RIGHT HAND

AFFIX
PHOTOGRAPH
HERE
(APPROX. 2" X 2")

19. IMPORTANT NOTICE

Before your declaration can be considered, it will be necessary that you securely attach to each copy thereof, in the space provided therefor, an unmounted individual photograph of yourself taken within one year of the date of this declaration. Prints, indistinct pictures, tintypes, or group photographs will not be accepted. Photographs must at all times remain securely attached to each copy of the declaration.

20. DATE OF BIRTH (Month, day and year)

I hereby certify that the fingerprints and photograph herein are those of the declarant and I have no information which would indicate that the declarant will use the firearm for other than lawful purposes.

E	SIGNATURE AND TITLE	ORGANIZATION AND ADDRESS

INSTRUCTIONS

Firearm.--The term "firearm" means a shotgun having a barrel or barrels of less than 18 inches in length, or a rifle or barrels of less than 16 inches in length, or any made from a rifle or shotgun (whether by alteration, modification, or otherwise) if such weapon as modified overall length of less than 26 inches, or any other except a pistol or revolver, from which a shot is discharged by an explosive if such weapon is capable of being used on the person, or a machine gun, and includes a silencer for any firearm whether or not such firearm is used within the foregoing definition. (Sec. 5843(1), I. R. C.)

Machine Gun.--The term "machine gun" means any which shoots, or is designed to shoot, automatically more than one shot, without manual operation by a single function of the trigger. (Sec. 5848(2), I. R. C.)

Muffler or Silencer.--The term "muffler" or "silencer" means any device for silencing or diminishing the report of any weapon, such as a rifle, carbine, pistol, revolver, shotgun, submachine gun, shotgun, fowling piece, or device from which a shot, bullet, or projectile may be fired by an explosive, and is not limited to mufflers or silencers for "firearms" as defined in section 5848 of the Internal Revenue Code.

Rate of tax for making a firearm.--The tax upon the making of any firearm (whether by manufacture, putting to alteration, any combination thereof, or otherwise) is \$200. (Sec. 5821(a), I. R. C.)

Preparation of the declaration of intent to make a firearm.--Pursuant to section 5821 of the Internal Revenue Code, and except as otherwise provided, every person making a firearm must make a declaration in this form, in duplicate, for each firearm. If the maker is an individual, he shall affix his fingerprints, attach to each declaration an individual photograph of himself within one year prior to the date of such declaration, and attach all other data required on the declaration. Upon completion of the declaration there must be affixed by the proposer to make the firearm a \$200 "National Firearm" stamp in the proper space, and cancel such stamp with his initials and the date thereon in ink. Both copies of the declaration must then be forwarded to the Director, Internal Revenue Service, Washington, D. C., 20224.

6. Disposition of declaration of intent to make a firearm.--If approved, the declaration will return to the maker, with the stamp affixed, to the maker of the firearm, and will return the duplicate. The maker of the firearm, if not the maker of the declaration, must retain the declaration until the approved declaration is received from the Director. The original declaration must be retained by the applicant and be available at all times for inspection by Government officers until such time as the firearm may be subsequently transferred.

7. Exemptions from use of declaration of intent to make a firearm.--Pursuant to section 5821(b) of the Internal Revenue Code, manufacturers who have registered and paid the tax provided for in section 5801(a) of the Code, persons making a firearm from another firearm with respect to which tax has been paid, prior to such making, under section 5821(c) of the Code and persons making a firearm for the use of (a) the United States Government, any State, Territory, or possession of the United States, any political subdivision thereof, or the District of Columbia, or (b) any peace officer or any Federal officer designated by regulations of the Secretary, shall not be required to file a declaration of intent to make a firearm, or required to pay tax to make such firearm, but should consult the applicable regulations to ascertain what reports are required.

8. Procedure where firearm is not made.--In the event that a declaration to make a firearm is executed and stamp affixed and thereafter such intent is abandoned and the firearm is not made, the maker may file a claim on Form 843 for reduction of the stamp with the District Director of Internal Revenue for his district. Such claim must be accompanied by the declaration to which the stamp is affixed.

9. Penalties.--Any person who violates or fails to comply with any of the requirements of Chapter 53 of the Internal Revenue Code shall, upon conviction, be fined not more than \$2,000 or be imprisoned for not more than 5 years, or both, in the discretion of the court. Moreover, any firearm involved in any violation of the provisions of Chapter 53 of the Internal Revenue Code or any regulations promulgated thereunder shall be subject to seizure and forfeiture.

10. Scope of tax on making a firearm.--The provisions of section 5821 of the Internal Revenue Code relating to the making of a firearm are applicable to persons within the States of the United States, and the District of Columbia.

STATUTES AND REGULATIONS INVOLVED

STATUTES (UNITED STATES CODE, TITLE 26)

§ 5821. Rate, exceptions, etc.

(a) Rate.--There shall be levied, collected, and paid upon the making in the United States of any firearm (whether by manufacture, putting together, alteration, any combination thereof, or otherwise) a tax at the rate of \$200 for each firearm so made.

(b) Exceptions.--The tax imposed by subsection (a) shall not apply to the making of a firearm--

(1) by any person who is engaged within the United States in the business of manufacturing firearms;

(2) from another firearm with respect to which a tax has been paid, prior to such making, under subsection (a) of this section; or

(3) for the use of--

(A) the United States Government, any State, Territory, or possession of the United States, any political subdivision thereof, or the District of Columbia, or

(B) any peace officer or any Federal officer designated by regulations of the Secretary or his delegate.

Any person who makes a firearm in respect of which tax imposed by subsection (a) does not apply by reason of the preceding sentence shall

make such report in respect thereof as the Secretary or his delegate may by regulation prescribe.

(c) By whom paid; when paid.--The tax imposed by subsection (a) shall be paid by the person making the firearm. Such tax shall be paid in advance of the making of the firearm.

(d) How paid.--Payment of the tax imposed by subsection (a) shall be represented by appropriate stamps to be provided by the Secretary or his delegate.

(e) Declaration.--It shall be unlawful for any person subject to the tax imposed by subsection (a) to make a firearm unless, prior to such making, he has declared in writing his intention to make a firearm, has affixed the stamp described in subsection (d) to the original of such declaration, and has filed such original and a copy thereof. The declaration required by the preceding sentence shall be filed at such place, and shall be in such form and contain such information, as the Secretary or his delegate may by regulations prescribe. The original of the declaration, with the stamp affixed, shall be returned to the person making the declaration. If the person making the declaration is an individual, there shall be included as part of the declaration the fingerprints and a photograph of such individual.

§ 5841. Registration of persons in general

Every person possessing a firearm shall register, with the Secretary or his delegate, the number or other mark identifying such firearm, together

with his his name, address, place where such firearm is usually kept, and place of business or employment, and, if such person is not a natural person, the name and home address of an executive officer thereof. No person shall be required to register under this section with respect to a firearm which such person acquired by transfer or importation or which such person made, if provisions of this chapter applied to such transfer, importation, or making, as the case may be, and if the provisions which applied thereto were complied with.

§ 5851. Possessing firearms illegally

It shall be unlawful for any person to receive or possess any firearm which has at any time been transferred in violation of sections 5811, 5812(b), 5813, 5814, 5844, or 5846, or which has at any time been made in violation of section 5821, or to possess any firearm which has not been registered as required by section 5841. Whenever on trial for a violation of this section the defendant is shown to have or to have had possession of such firearm, such possession shall be deemed sufficient evidence to authorize conviction, unless the defendant explains such possession to the satisfaction of the jury.

§ 5861. Penalties

Any person who violates or fails to comply with any of the requirements of this chapter shall, upon conviction, be fined not more than

\$2,000, or be imprisoned for not more than 5 years, or both, in the discretion of the court.

§ 6107. List of special taxpayers for public inspection

In the principal internal revenue office in each internal revenue district there shall be kept, for public inspection, an alphabetical list of the names of all persons who have paid special taxes under subtitle D or E with respect to a trade or business carried on within such district. Such list shall be prepared and kept pursuant to regulations prescribed by the Secretary or his delegate, and shall contain the time, place, and business for which such special taxes have been paid, and upon application of any prosecuting officer of any State, county, or municipality there shall be furnished to him a certified copy thereof, as of a public record, for which a fee of \$1 for each 100 words or fraction thereof in the copy or copies so requested may be charged.

REGULATIONS (CODE OF FEDERAL REGULATIONS, TITLE 26, CHAPTER 1)

§ 179.77 Written declaration.

Except as provided in §§ 179.82, 179.83, and 179.84 every person intending to make a firearm must declare his intention in writing on Form 1A (Firearms) to make such firearm. The declaration shall show (a) the name and address of the maker, and, if the maker is other than a natural person, the name and address of the principal officer or

authorized representative thereof; (b) the serial number, model, length of barrel, trade name, and other marks identifying the firearm; and (c) such additional information as may be required on Form 1A (Firearms). A "National Firearms Act" stamp (see § 179.75) must be affixed to the original declaration in the space provided therefor, and properly canceled (see § 179.81). Form 1A (Firearms) and appropriate tax stamp may be obtained from any District Director of Internal Revenue.

§ 179.78 Identification of declarant.

If the declarant is an individual, he shall attach to each copy of the declaration an individual photograph of himself, taken within one year prior to the date of such declaration, and shall affix his fingerprints to such declaration. The fingerprints must be clear for accurate classification and should be taken by someone properly equipped to take them. The declaration must be supported by a certificate of the local chief of police, sheriff of the county, United States attorney, United States marshal, or such other person whose certificate may in a particular case be acceptable to the Director, Alcohol and Tobacco Tax Division, certifying that he is satisfied that the fingerprints and photograph appearing on the declaration are those of the declarant and that the firearm is intended by such person for lawful purposes.

§ 179.79 Procedure for approval of declaration.

The declaration of intent, to make a firearm, Form 1A (Firearms), must be forwarded directly, in duplicate, by the maker of the firearm to the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington 25, D.C. The Director, Alcohol and Tobacco Tax Division, will consider the application for approval or disapproval. If the application is approved, the Director, Alcohol and Tobacco Tax Division, will return the original thereof to the maker of the firearm and retain the duplicate. Upon receipt of the approved declaration, the maker is authorized to make the firearm described therein. The maker of the firearm shall not, under any circumstances, make the firearm until the declaration, satisfactorily executed, with the "National Firearms Act" stamp attached, has been forwarded to the Director, Alcohol and Tobacco Tax Division, and has been approved and returned by him. If the application is disapproved, the original Form 1A (Firearms) with the "National Firearms Act" stamp attached thereto will be returned to the maker with the reasons for disapproval stated on the form.

